UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/1999/SR.14
7 May 1999

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twentieth session

SUMMARY RECORD OF THE 14th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 4 May 1999, at 3 p.m.

Chairperson: Mrs. BONOAN-DANDAN

CONTENTS

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of Ireland

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.99-41538 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 8) (continued)

Initial report of Ireland (E/1990/5/Add.34; E/C.12/Q/IRE/1; HR/CESCR/NONE/1991/1)

1. At the invitation of the Chairperson, the members of the delegation of Ireland took places at the Committee table.

2. The CHAIRPERSON welcomed the delegation of Ireland and expressed the hope that its dialogue with the Committee would be constructive. In accordance with the Committee's usual practice, the delegation was invited to make an introductory statement, after which the Committee would ask questions about the report on the basis of the list of issues.

3. Mr. McDONAGH (Ireland) said that although Ireland's second report covering 1996 to 1998 was ready for submission, on the Committee's advice it was being deferred in order to take account of members' comments on the initial report. He was sure that their views would be useful for Ireland's evaluation of its implementation of the Covenant.

4. Focusing on the questions raised on the list of issues, he said that one key priority of his Government's Northern Ireland policy was full implementation of the 1998 Belfast Agreement. It had been the subject of positive referenda in both parts of Ireland. While Unionist opinion was more divided, 73 per cent of persons polled in the North were currently in favour. His country was also working in close collaboration with the British Government and the pro-Agreement Northern Ireland political parties to ensure speedy implementation of the Agreement, the human rights aspects of which had been passed into British law in November 1998.

5. He outlined the positive steps taken by both parts of Ireland to that end, including Ireland's intention to ratify the Council of Europe Convention on National Minorities and the signing of four supplementary international agreements with the British Government. All provisions were in place for the institutions of the Agreement to receive their full powers once an Executive was formed, despite the problems that had arisen over the issue of the formation of the Executive and decommissioning, which both Governments and the pro-Agreement parties were endeavouring to solve. Although there had been setbacks, such as the Omagh bomb that had killed 29 people, the main paramilitary groupings in Northern Ireland were maintaining their ceasefires.

6. The Government had benefited from the expertise and cooperation of the Office of the High Commissioner for Human Rights in setting up a national human rights commission, in connection with which the Prime Minister had undertaken to exceed requirements and endeavour to set, rather than follow, standards for international best practice in that field. The pertinent legislation was expected to be enacted during the current parliamentary

session. Those institutions, in both North and South, would be extremely advanced and would undoubtedly increase human rights awareness and protection in Ireland.

7. Turning to the compatibility of the Irish constitutional and legal framework with the Covenant, he said that his Government was committed to strengthening and underpinning the constitutional position of human rights and that Ireland had ratified the Covenant in 1989 on the basis of its compatibility with the Constitution. The 1996 report of the Constitutional Review Group contained various recommendations which were being considered, together with other proposals, by the All-Party Oireachtas (parliamentary) Committee on the Constitution, which would make a detailed study of the economic and social rights aspects within a few months. Although the rights expressed in the Constitution were not exhaustive, it was an organic legal document for the assertion of individual and fundamental rights and the identification of hitherto unrecognized rights.

8. Equality was assigned the highest priority by the Government, as attested to by the new and very comprehensive 1998 Employment Equality Act - due to be implemented on 1 September 1999 - which outlawed discrimination on nine grounds in all work-related areas. The Act also established a new infrastructure, generously funded by the Government, to reinforce the new anti-discrimination code being provided under employment and equal status legislation. It was complemented by the 1999 Equal Status Bill - a commitment under the Belfast Agreement - which covered discrimination outside the employment context on the same grounds as the Employment Equality Act, with the three additional grounds of colour, nationality and national or ethnic origin. The Government also intended shortly to ratify the International Convention on the Elimination of All Forms of Racial Discrimination and to lift one of Ireland's reservations to the Convention on the Elimination of All Forms of Discrimination against Women.

9. Asylum indeed posed a great challenge to Ireland: the number of applications in 1995 had more than doubled in 1996 and increased more than fourfold by 1998 to 4,626. The problem had been addressed with the establishment of an Asylum Task Force and further procedures for processing applications had been applied, following extensive consultation with the Office of the United Nations High Commissioner for Refugees (UNHCR). Under the Refugee Act, at the new, well-staffed Refugee Applications Centre each applicant received a procedures document (available in 15 languages), which provided for independent appeal at any stage of the process. Four independent lawyers had been appointed by the Minister of Justice, Equality and Law Reform to serve as appeal authorities. A new Refugee Legal Service had gone into operation in February 1999, and a monitoring committee was being set up to ensure that asylum seekers received quality refugee legal service. Moreover, a refugee language support unit was being established at Trinity College Dublin by the Ministry of Education and Science.

10. Although not enshrined in the legislation as a right, an affordable dwelling suited to every household's needs was the keystone of Ireland's housing policy, for which purpose the Government had increased its social housing expenditure.

11. In 1996 the Commission on the Status of People with Disabilities - composed largely of disabled persons - had published a report on its three-year study, entitled "A Strategy for Equality". It contained 402 recommendations for empowering the disabled and had become the cornerstone of Government policy. It was being successfully implemented by the new minister appointed with special responsibility for disability and equality. The Government also provided funding for the interim Irish Council of People with Disabilities launched in 1997. An interim National Disability Authority - comprising mainly disabled persons - advised the Government on disability policy, and draft legislation was under consideration to endow it with statutory powers. Once that had been achieved and the equal status legislation had been enacted, a rights-based Disabilities Bill would be prepared.

12. He outlined the Government's recent actions in favour of the mentally handicapped, based on the 1997 Assessment of Need report of the Department of Health and Children, which included increased funding for new purpose-built day-care and residential facilities for persons currently accommodated in psychiatric hospitals and other inappropriate settings, as well as for the maintenance of existing facilities.

13. On the subject of social protection, the difficult economic conditions earlier experienced by Ireland, making for high unemployment, had hindered its implementation of the 1986 recommendations of the Commission on Social Welfare. However, more recently, with the sharp drop in unemployment, social protection target rates in real terms had largely been met.

14. The Government's unemployment policy concentrated on promoting employability, backed by training schemes, as a means of reducing unemployment, especially long-term unemployment. In an effort to make its tax and social security systems more employment-friendly, poverty and employment traps were being removed, and special lower rate contributions had been introduced. The Family Income Supplement and Back to Work allowance schemes were among several measures to promote employment for the unemployed. Measures were also afoot to encourage social security beneficiaries in the active age group to obtain regular employment. The result of those measures had been a significant reduction in the unemployment rate from one of the highest in the European Union to 6.7 per cent, which was below the EU average.

15. The 1997 National Anti-Poverty Strategy to promote social inclusion of the poor and excluded into mainstream society recognized that income support needed to be combined with more active policies, such as addressing educational disadvantage and problems peculiar to urban areas and rural poverty. Special targets had been set and political and administrative structures put in place for implementing the strategy and monitoring progress.

16. Concerning the right to education, he said that the country was convinced of the role of education, as the key to maximizing the individual's full potential, in ensuring social inclusion. The 1998 Education Act provided a clear statutory framework for the Irish education system, and placed great emphasis on the concept of partnership in its operation. There was also new legislation governing children with educational welfare problems, which raised

from 15 to 16 the minimum school-leaving age, and provided for a new national board to coordinate some services designed for children with difficulties at school.

17. He said in conclusion that he looked forward to a constructive dialogue with the Committee.

18. Mr. RIEDEL warmly welcomed the encouragingly large delegation of Ireland, which was appearing for the first time before the Committee. Referring to constitutional matters, he said he had noted that the 1937 Constitution as amended in 1987 made sparse reference to economic, social and cultural rights. He was dismayed to learn that the government commission set up to implement the constitutional reform had decided not to include those rights in its constitutional amendments. Since the Amsterdam Treaty, which had entered into force on the previous day, contained strong indications concerning the revised European Social Charter and the Covenant, he wondered whether it was too late for the Constitution to contain a core area of rights.

19. Turning to case law, he asked whether Ireland had as yet translated the provisions of the Covenant into its domestic legislation so that they could be applied in the courts, and whether the courts had made reference on any occasion to individual articles of the Covenant. Indeed, considering that the Irish Constitution largely reflected the bill-of-rights approach of the Universal Declaration of Human Rights, he wished to know the authorities' attitude to the optional protocol proposed by the Committee in 1998, which was intended to confer on economic, social and cultural rights the same status as civil and political rights.

20. He asked whether it was likely that the dialogue would lead the Irish authorities to review the need for any reservations whatsoever and withdraw those it had expressed to articles 2 (2) and 13 (2) (a) of the Covenant. Furthermore, given the importance the Committee assigned to the contribution of non-governmental organizations (NGOs) - a source of immense knowledge - he sought information on those organizations' participation in the drafting of Ireland's initial report and their contribution to its content, and asked whether there was a national human rights commissioner who processed the information they provided.

21. Mr. AHMED also warmly welcomed the Irish delegation and commended it on the level of representation and the detail of its written replies. An NGO, the Irish Commission for Justice and Peace, had praised the Irish authorities' open commissioning of comments from NGOs, as well as the positive developments the country had known in recent years. However, the International Labour Organization had observed that the 1894 Irish Merchant Shipping Act still contained rather inhumane disciplinary measures against wayward seafarers, which he hoped would soon be amended to bring Irish legislation into line with the Covenant. He was pleased to learn that an employment equality bill had been enacted, despite the Supreme Court's earlier ruling that such a bill would be unconstitutional.

22. It appeared from a 1998 United States State Department report that, while Ireland generally respected the human rights of its citizens, there were still a number of disturbing areas. They included substandard and abusive

prison conditions, continued special arrest and detention authority and non-jury courts, occasional censorship, discrimination and violence against women and children, and the lack of specific legislation on discrimination, especially against the disabled and the Travelling Community. How did the country plan to rectify them?

23. Mr. HUNT allied himself with the comments made by Mr. Riedel, many of which he had intended to raise. He hoped that the Government of Ireland would give sympathetic treatment to economic, social and cultural rights in its constitutional reform. In the current Constitution, dating from the 1930s, some rights were justiciable, or, as expressed in the Constitution of Ireland, "cognisable". Those referred mainly to civil and political rights, although education was also featured. The "Directive Principles of Social Policy" mentioned in paragraph 7 of the Core Document (HRI/CORE/1/Add.15/Rev.1) governed economic, social and cultural rights, but they were generally for the guidance of parliament, and the rights themselves were not justiciable. Hence, there was already a dichotomy between civil and political rights on the one hand and economic, social and cultural rights on the other in Ireland in the 1930s, before it appeared at the international level. He would like to know what the influence of the directive principles had been over the past 50 or so years; had it been purely symbolic, or had the principles actually affected policy?

24. Mrs. JIMENEZ BUTRAGUEÑO said it would have been useful to have the new report containing updated information ahead of time; she had noted many important points, which it would have been helpful to have to hand. She had been pleased to hear that there would be a new national Human Rights Commission and that the Constitution was still being reviewed, but in the light of those facts she was concerned by the failure to answer question 6 of the list of issues, on whether positive consideration was being given to inserting the rights protected under the Covenant into the new Constitution. Finally, with regard to the new anti-discrimination law, many criteria had been taken into account and several of them had been listed, but she had heard no reference to age; did the law protect against age-discrimination?

25. Mr. SADI commented that the Good Friday Agreement provided the general framework for all the economic, social and cultural rights, since without peace, they could not be enjoyed. He asked to what extent the delegation felt optimistic about the chances of attaining harmony between two religious groups that had been in conflict for many years. The experience of many countries had shown that such divisions could not easily be overcome, but he hoped the Agreement would provide a solid peace. Did the Good Friday Agreement enjoy grass-roots support? If not, what efforts were being made to increase that support? It was necessary to create a culture of reconciliation, as South Africa had done with its Truth and Reconciliation Commission; were any such efforts being undertaken in Ireland?

26. Both the Committee and the delegation appeared to be pinning their hopes on the Constitutional Review Group. The Committee had hoped that it would fill existing gaps with regard to economic, social and cultural rights, and particularly that the Group would not merely "look in depth" at the issue, but would at least "look favourably" on it. According to information obtained from NGO sources, it had already rejected the insertion of economic, social

and cultural rights. Could the delegation give a more positive prognosis? He wondered what the composition of the Group was, since that could affect the outcome.

27. Mr. McDONAGH (Ireland) said that some questions might require further research, but the delegation hoped to address them all. Many questions had been asked about the Constitutional Review Group; it was made up of experts, academics, lawyers and former public servants. Their report had been sent to the All-Party Parliamentary Committee chaired by Deputy Brian Lenihan. Different countries had different perceptions of how democracy operated, and the report of the Constitutional Review Group had concluded that "the main reason why the Constitution should not confer personal rights ... [was] that those [were] essentially political matters; it would be a distortion of democracy to transfer decisions on major issues of policy ... to an unelected judiciary". The report would be considered by the All-Party Parliamentary Committee, which would take into account recommendations made by other bodies and committees, including the Committee on Economic, Social and Cultural Rights, and would decide whether constitutional amendments were needed.

28. With regard to the Good Friday Agreement, it was an agreement that applied within Northern Ireland and not between Northern Ireland and the Republic of Ireland. Seventy-two per cent of the population supported and continued to support the Good Friday Agreement, and in any normal society 72 per cent would be considered a handsome majority; however, there were relatively very small groups on either side that were apparently not prepared to accept the will of the majority. Both Governments and the pro-Agreement parties were working for wider acceptance. The delegation hoped and expected that the Agreement would be implemented in full and would lead to harmony in the future.

29. Replying to Mrs. Jimenez Butragueño, he confirmed that age was one of the nine criteria in the anti-discrimination bill. He clarified that the reply to question 6 was effectively that the All-Party Committee would take account of the provisions of the Covenant, and that until that Committee made its decision, no further progress could be made on the issue. It was unfortunate that the new material had not been distributed; it was in fact already available as the second periodic report of Ireland, but it was the responsibility of the secretariat to circulate it, and it had been the secretariat's decision to withhold it.

30. There had been few court cases in the area of economic, social and cultural rights. The European Convention was recognized as influential in public policy; but in the main implementation of policies in line with the Covenant was achieved politically and administratively and not through the courts.

31. Regarding Mr. Ahmed's queries, he stated that merchant shipping was virtually absent from Ireland. He was not familiar with the Act cited, but suspected the provisions mentioned would be found unconstitutional by Irish courts. Addressing the issue of the Employment Equality Bill, he said there had been three or four points which had led to its not being accepted, for instance, a technical issue on evidence for discrimination. The Bill had tried to prohibit discrimination on nine grounds, including disability, and

one substantial reason why it had not been passed was the decision by the courts that too much positive discrimination was built into the Bill. It had since been revised and amended, re-presented to parliament, and enacted in 1998. Ireland therefore now had satisfactory anti-discrimination legislation, although they were finding, as did many countries, that the cost of provision was a problem.

32. Prison overcrowding was certainly a problem, but major strides had been made, and 1999 would see the opening of one women's prison and two men's prisons, the first built in decades, providing a total of 1,200 extra places.

33. Ms. BARRON (Ireland), addressing the issue of the practice of the courts and the extent to which they had considered article 45 of the Constitution and the directive principles on social policy, stated that provisions specifically relating to the Covenant had not, as far as she knew, been raised. However, although the directives were not justiciable, they did guide the parliament. Since 1972, the courts had held that rights could be extrapolated from article 40.3 of the Constitution (the unenumerated rights provision). The right to work and the right to earn a livelihood had in fact been derived from the article 45 principles. However, although the courts looked to article 45 to extend the personal rights provisions, there was no specific ruling of the Irish courts allowing article 45 to be invoked in domestic courts.

34. Mr. ROWAN (Ireland) said that the Optional Protocol was under examination. Ireland had already ratified the Optional Protocol to the Convention on Civil and Political Rights and, in principle, viewed ratification positively; however, they had to see the texts, and decide on that basis.

35. NGOs had certainly been involved, particularly in the preparation of the second report, and the reports for the Committee on the Rights of the Child and the Committee on Civil and Political Rights. The Government held full consultations with every NGO it felt could provide useful input, and additionally there was a chapter specifically detailing the views of NGOs.

36. Mr. McDONAGH (Ireland) said that Ireland would continue to maintain its reservations. The reservation on education was maintained, since the Irish Government believed that parents should have the priority right to choose, and not have decisions imposed by the State. The reservation on the Irish language was maintained, since they considered it a cultural requirement.

37. The CHAIRPERSON invited questions on articles 2.2 and 3, with reference to questions 8-15 of the list of issues.

38. Mr. TEXIER welcomed the numerous and highly-qualified delegation. The Covenant provided for international cooperation to help countries overcome problems in implementation of the Covenant; what percentage of the national budget of Ireland was devoted to international cooperation? The United Nations target was 0.7 per cent, but few countries managed to achieve that. What was the figure in Ireland, and where was the aid directed? Was it bilateral aid or channelled through international institutions? Was any of it focused on assistance to poorer countries to promote greater respect for the provisions of the Covenant?

39. There was a lengthy passage in the written replies on refugees, including their civil and political rights and economic, social and cultural rights. However, if he had understood correctly, the previously tiny trickle of dozens or hundreds of refugees had now turned into a vast flood of over 4,000, overwhelming Ireland's capacity to cope and creating problems. If it had been decided not to apply the 1996 Refugee Act, how were refugees dealt with? What measures were taken to reduce the waiting period? Under the Geneva Convention, a competent authority had to determine status and the right to asylum. What measures were taken during that period to ensure enjoyment of their economic, social and cultural rights; and, specifically, did asylum seekers have access to work whilst awaiting a decision on their status?

40. Mr. PILLAY wished to raise questions regarding the absence of legislation to promote the enjoyment of economic, social and cultural rights. The delegation had acknowledged that there was no rights-based disability legislation in Ireland, i.e. there was a lack of specific legislation for the provision of services to the disabled to enable them to enjoy those rights; he found that surprising. The Report of the Commission on the Status of Disabled People "A Strategy for Equality" had found that public attitudes to disability were still based on charity rather than on rights, and the odds were stacked against disabled people at every turn. Very few public or private buildings had disabled access. Why was there still no legislation on access to buildings? There was also no legislation on provision of services to the mentally handicapped, and even no law providing accommodation for them. Paragraph 673 of the initial report of Ireland stated that new legislation was being prepared to bring Irish legislation into conformity with the European Convention on Human Rights; yet in 1999 legislation on that issue was still being prepared by the Ministry of Justice. Again, with regard to discrimination against and the rights of people with a mental disorder, paragraph 169 of the written replies repeated the assertion made in 1996.

41. Eighty per cent of disabled people were unemployed, which was 10 times the number in the general population. The status of disabled people with regard to income, education, mobility and housing demonstrated that they were treated as second class citizens. He asked whether the new Employment Equality Act of 1998 brought comfort to the disabled unemployed. As a judge himself, he found the provisions ambiguous, since article 16.3 (c) was a derogation from 16.3 (a). If employing a disabled person entailed a substantial cost to an employer, the employer could refuse to employ that person. Obviously the courts would decide what constituted substantial costs, but it appeared to be an inbuilt opportunity for discrimination.

42. He asked where disabled people addressed complaints about discrimination. If he was not mistaken, there was a mechanism for complaints in the Equal Status Bill. Ireland had a problem regarding the children of the poor and of refugees being denied access to education, housing and health. The Travelling Community was also discriminated against. The Bill ought to bring an end to discrimination against those groups, but would it effectively do so?

43. Mr. KUZNETSOV said that, although he was not very familiar with the country's legislation, he had been surprised to hear that Ireland had not yet ratified the Convention on the Elimination of All Forms of Racial

Discrimination. The Irish Government had stated that the Convention would be ratified once the national Equal Status Bill had come into force. That was surprising since the legislation was usually adapted where such conventions contradicted domestic legislation, so as to be consistent with the conventions. Further comments on the matter would be appreciated.

44. Secondly, in relation to the reservations on article 2.2 of the Covenant, the country report stated that access to certain professions was restricted to people with a knowledge of the Irish language. Would it be possible to obtain a list of such professions and was the list revised, at least periodically?

45. Mr. CEAUSU said that the report submitted was informative but on occasions too detailed and prevented the pertinent facts from emerging clearly. Paragraph 12 of the report cited the text of article 40.1 of the Constitution. According to that article, all citizens should, as human persons, be held equal before the law. However, according to the second part of the article, equality before the law did not mean that the State would disregard differences of capacity, be they physical or moral, and social function in its enactments. The text of the article was unclear in terms of its practical consequences. Firstly, a principle was stated, i.e. equality before the law, but that was followed by the recognition of the State's right to seek exemptions to that principle in its decision-making process. The idea of physical capacity was clear but, by contrast, moral capacity was undefined. What did that mean in terms of State decisions? Moreover, when did differences of social function come into play?

46. As regards the Equal Status Bill, two draft laws had been adopted in the fight against discrimination. However, the first of the two drafts had been declared unconstitutional by the Supreme Court. A verdict was also awaited from that Court on the second draft law. What were the reasons invoked by the Court for declaring the first of the two draft laws unconstitutional when that law had already been adopted by the Parliament? Was the decision linked to the text of article 40 of the Constitution?

47. Mr. AHMED, citing examples of discriminatory practices, said that in 1998 the Human Rights Committee had noted with concern the existence of discriminatory distinctions between citizens who were Irish by birth and those who were naturalized. Discriminatory treatment had also been meted out to non-nationals. How was it possible to explain those distinctions? Secondly, discrimination was prevalent in relation to access to health and education services. Also in 1998, the Committee on the Rights of the Child had noted with concern the difficulties faced by children from vulnerable and disadvantaged groups, including Travellers' and refugee children. Travellers' children were sometimes denied access to schools and were forced to study in separate classrooms. Thirdly, discrimination was a major part of the daily life of Traveller communities, thereby ostracizing them from normal society. The negative impact of such isolation represented a barrier to the development of good relations between Travellers and settled communities.

48. Fourthly, disabled people, who represented 10 per cent of the overall population, had no institutional focal point for addressing human rights complaints in relation to their disabilities. Relevant cases had been cited

by the Irish Commission for Justice and Peace and the Council for Social Welfare. Recently the Irish Government Commission had referred to the status of people with disabilities and had termed such people the neglected citizens of Ireland. Many suffered intolerable conditions owing to outdated social and economic policies and unthinking public attitudes. Furthermore, the United States State Department Report indicated that 15 per cent of the Irish population had disabilities, and 80 per cent of them were unemployed. Moreover, there was no legislation to protect them against discrimination in employment. The problems faced by disabled people had been highlighted by the Irish Council of People with Disabilities. The Council had stated that even after the introduction of the Employment Equality Act, employers, were permitted to discriminate against the employment of the disabled on grounds of cost. Under the terms of the Act, a person with a disability would be regarded as competent to undertake any duties with the assistance of special treatment or facilities. Moreover, the Act also stated that an employer should do all that was reasonable to accommodate the needs of a person with a disability by providing the special treatment or facilities. However, the refusal or failure to provide such treatment or facilities would not be regarded as unreasonable if such provision gave rise to a cost other than a nominal cost to the employer. It was important in that case to define the concept of a nominal cost. The Act would clearly give rise to much litigation, since it contained a built-in facility for employers to refuse to give work to disabled people. The Act did not remedy their difficult situation at all.

49. Mr. SADI asked how the Equal Status Bill and the Employment Equality Act were to be interpreted in the light of article 40.1 of the Constitution. That article appeared to suggest that different kinds of treatment were given to different people. As regards people who were mentally or physically disabled, the Equal Status Bill alone was insufficient if discrimination were to be eliminated. Such people also needed preferential treatment since the two pieces of legislation referred to did not go far enough. Furthermore, was a cultural and indeed religious stigma attached to disability? How were disabled people treated by the public in general?

50. Mr. WIMER ZAMBRANO said that it was not so much Ireland's failure to ratify the Convention on the Elimination of All Forms of Racial Discrimination that concerned him as the reasons for that failure. Even though mechanisms and procedures differed between countries, usually such a convention was ratified and domestic laws were subsequently adapted to them, whereas in Ireland the process appeared to be the opposite. Why was that the case?

51. More details should also be provided with regard to migrant workers. Were they common in Ireland and what were the social repercussions of their presence?

52. Mr. GRISSA emphasized that the stipulated requirement of compulsory knowledge of Irish was superfluous since knowledge of a national language to work in the civil service was common to all countries. Furthermore, it did not appear necessary to refer to the concept of moral capacity in the Constitution. Finally, how was the term disability defined in Ireland? Given that the number of disabled people was high, was an assessment made in relation to medical criteria?

53. Mr. THAPALIA said that despite national legislation and the comments made by the Government there were still many cases of discrimination. He cited a report issued in the United States which said that Travellers were the largest distinct group outside normal society in Ireland. Furthermore, in 1991 a European Parliament committee had singled out the Tavellers' Community as the group most frequently subjected to discrimination. In addition, the Human Rights Committee had recommended that Ireland should take action on improving the situation of Traveller Communities in public affairs. Could case law be provided where decisions had been taken in favour of Travellers and naturalized citizens?

54. Mr. McDONAGH (Ireland), responding to the questions raised, said that the case law relating to Travellers contained various instances of discrimination against them. The two most recent pieces of legislation, the Employment Equality Act and the Equal Status Bill, had not yet come into force; however, Travellers had already obtained justice in cases of discrimination. As regards the definition of disability, the Act in question offered the widest possible coverage. It singled out five categories of disabled people. Those categories included the total or partial absence of a person's bodily or mental functions, including the absence of a part of their body, the malfunction, malformation or disfigurement of a part of a person's body, and also a condition, disease or illness affecting a person's thought processes, perception of reality, emotions or judgement resulting in disturbed behaviour.

55. It was true that in Ireland the practice had been not to ratify international conventions until appropriate domestic legislation had been put in place. That was not the case in certain other countries but Ireland had thus far not encountered any problems in that regard.

56. As for legislation on disability, following the ruling by the Supreme Court that the Employment Equality Act was unconstitutional, a new Act had been produced, stipulating, as mentioned earlier, that an employee had to be considered fully competent and capable of undertaking the duties attached to a job, if that person could do the job with the provision of special treatment or facilities, provided that the cost of such treatment or facilities was not more than a nominal one. The Act placed the obligation of reasonable accommodation on the employer; it did not, however, define the term nominal, which depended on the sphere of its application. In that regard, the scheme of grants for workplace adaptation and equipment should be borne in mind, when considering the cost of providing treatment and facilities. Under recently enacted legislation, if a person believed that he or she was the victim of discrimination, the matter could be referred to the director of equality investigations, who would act as the first instance of redress. The Employment Equality Act and the Equal Status Bill both dealt with discrimination. Once they had come into force, a Disability Act would be introduced which would promote further the rights of people with disabilities.

57. With reference to Mr. Sadi's question as to what form the general framework of a projected disability Act might take, the work programme had envisaged first implementing the anti-discrimination legislation in a general sense and then considering its impact on disabled persons, but as yet no bill was ready.

58. Mrs. JIMENEZ BUTRAGUEÑO asked whether Irish companies were offered incentives to employ disabled persons.

59. Mr. PILLAY noted that Ireland had been preparing legislation for some time and asked what the status on such legislation was.

60. Mr. AHMED said that he would like to remind the delegation that the Committee required answers on the discriminatory distinctions between Irish citizens by birth and naturalized citizens, non-nationals, refugees and asylum seekers and how each category was treated under Irish law.

61. Mr. WIMER ZAMBRANO asked for information on migrant workers, as he would assume that there would be a high number of such persons in Ireland in the light of the country's economic development.

62. Mr. McDONAGH (Ireland) said that employers were provided with grants to offer employment to disabled persons. Quotas for the employment of disabled persons also existed in the civil service and, generally, in the public service. There were similar schemes in the private sector.

63. Although no exact figures were available, migrant workers did not represent a major group in Ireland. Foreign employees were mainly from the European Union States, which meant that they enjoyed the same rights as Irish citizens.

64. Ms. O'NEILL (Ireland) said that a distinction was made between Irish citizens by birth and naturalized citizens. Under existing legislation, non-national spouses of Irish-born citizens could apply for post-nuptial naturalization after three years. There were no such provisions for non-national spouses of naturalized Irish citizens but those spouses could apply for citizenship in the normal way after five years. However, it was possible for the Minister to waive the criteria, which was often done.

65. The children of naturalized Irish citizens born outside of Ireland did not automatically assume Irish citizenship as did the children of Irish-born citizens. However, they could obtain citizenship by registering in the Foreign Births Register of the Department of Foreign Affairs. As regards the general discrimination of non-nationals, so-called "political discrimination" criteria were applied to non-European Economic Area (EEA) nationals based on residence, education, work and so on. Differential treatment also depended on whether citizens were from the European Union or from visa or non-visa countries. However, generally speaking, there were specific differences between Irish citizens and non-nationals in relation to immigration policy. Refugees were entitled to the same general rights as Irish citizens. Once granted refugee status, they could apply for Irish citizenship. Persons were allowed to have dual nationality and were not required to give up their other nationality in order to acquire Irish nationality. However certain countries required their nationals to give up their nationality if they acquired Irish citizenship. Asylum seekers were entitled to the same health and welfare benefits as anybody else. However they were not allowed to work and only had access to primary and secondary education.

66. Mr. McDONAGH (Ireland), addressing the issue of the Travelling Community, said that discrimination in employment against Travellers was illegal and that there was no discrimination in education in their regard.

67. Mr. DOYLE (Ireland) said that the State had instituted a number of positive discrimination measures to assist the children of Travellers. The policy's aim was to integrate the children in the Irish education system. In 1998, the Minister of Education had set up an Advisory Committee on Traveller Education, which included three Travellers, to advise him on the future development of services in that area. Positive discrimination measures included support for Traveller pre-school centres, and the provision of additional special resource teachers to develop the appropriate education for Traveller children. Admittedly, only a small number of Traveller children attended post-primary schools, but the State's objective was to increase that number substantially over the coming years. Targets, policies and additional funding had been identified to that end. In addition, specific centres for Traveller children had been established in the event that post-primary education proved inappropriate. Both junior and senior Traveller training centres had been set up and a national coordinator had been appointed by the State to promote the development of the senior network and to report on its effectiveness. Further monitoring was provided for through a visiting teacher service and a national education officer.

68. Mr. McDONAGH (Ireland), referring to the question posed on article 40.1 of the Constitution of Ireland (para. 57 of the initial report of Ireland - E/1990/5/Add.34) relating to differences based on moral capacity, said that for example, some persons' moral record would exclude them from working in childcare in the interest of protecting the children.

69. The language requirement applied mainly to the public sector, allowing for persons desirous of a public sector service and who were entitled to the provision of that service in the Irish language to obtain it.

70. There was absolutely no cultural or religious stigma attached to persons with disabilities. The mental health legislation had been delayed on account of other legislation being considered but enactment was expected later that year.

71. Mr. ROWAN (Ireland), responding to Mr. Texier's question on international cooperation and development assistance programmes, said that the amount allocated to such programmes represented 0.31 per cent of GDP (gross domestic product), up from 0.16 per cent in 1992. Because of Ireland's rapid economic growth, the substantial percentage increases rendered absolute figures even greater for the development budget because of the expanding GDP. The Government was committed to the United Nations 0.7 per cent of GDP development assistance but had set itself an interim target to be reached by 2002. The budget was divided into bilateral assistance and contributions to international organizations. Bilateral assistance focused on social and economic development and a number of African countries had been targeted for that. Bilateral assistance programmes included human rights and democratization clauses in order to channel some of the funds into democratization/good governance projects, which would promote the development of relevant organs in the recipient countries.

72. Mr. McDONAGH (Ireland) said that the Refugee Act had been designed to process some 300 to 400 applications per year but that they were being swamped with 10 times that number rendering the procedures of the Act unworkable. The Government had approved amendments to the Refugee Act which would be included in the immigration bill before the appropriate parliamentary committee. Consultations were under way to review the Act, in the longer term, based on a comparative study of European Union asylum legislation. Procedures established in agreement with the United Nations High Commissioner for Refugees (UNHCR) were in operation and provided for appeals at all stages of the process, a newly-introduced legal refugee service, a documentation centre and the training of staff by the UNHCR.

73. The CHAIRPERSON invited Committee members to pose questions on articles 6 to 9 of the Covenant.

74. Mr. PILLAY asked why were adequate resources not being devoted by Ireland to vocational training courses and apprenticeship schemes, in the light of the fact that secondary school students' enrolment in courses and schemes were below the level of Organization of Economic Cooperation and Development (OECD) countries.

75. Mr. CEAUSU, referring to paragraph 98 of Ireland's initial report, asked whether there were any limitations to the right to work, or the free choice of employment or employer for foreigners authorized to work in Ireland.

76. Mr. TEXIER said that, in a 1997 report, the Irish Government had indicated that it intended to modify the Merchant Shipping Act and asked to be updated on that. He also wanted to know what measures had been taken to reintegrate long-term unemployed persons in the labour market. Turning to the minimum wage, he remarked on the small percentage of the workforce which was guaranteed a statutory minimum wage (para. 81 of the written replies) and asked whether the Government intended to increase the percentage.

77. Mr. GRISSA said that the information provided was not up-to-date and inquired as to the current unemployment rate. He would have liked to have seen a breakdown by gender and age, in order to arrive at a more balanced judgement. For example, what was the unemployment rate among women? Was there a correlation between the greater number of women in higher education and the unemployment rate among women? What was the unemployment rate among the disabled? The Committee would like to have more specific data in order to analyse the effects of unemployment on different groups.

78. Mr. KOUZNETSOV noted that, although Ireland was not a signatory to the Covenant, the European Social Charter recognized the right to set up trade unions. He noted that trade unions existed in Ireland but that Irish legislation did not provide for trade union rights or the formation of trade unions. Did the Government intend to adapt legislation on the right to strike in line with the European Social Charter? Referring to Ireland's written reply to issue 18 (HR/CESCR/NONE/1999/1; para. 82) indicating that civil servants and teachers had their own dedicated dispute-settling mechanisms, he would like to know why those two particular categories had been established and why there was a difference in arbitration schemes between them and the rest of the workforce.

79. Mr. CEAUSU, referring to paragraph 138 of the initial report of Ireland (E/1990/5/Add.34) on Registered Employment Agreements, asked whether the request for registration was made by one or both parties to the agreement, whether all, or only some agreements could be registered, and whether the Labour Court could refuse to register collective agreements. He commented that the Trade Union Act, 1941, which provided for the obligatory acquisition of a negotiation licence, was very old, especially against the background of changing international standards, in particular in the International Labour Organization. Referring to paragraph 181 of the initial report of Ireland, he questioned whether the granting of negotiation licences and the power of the Minister for Enterprise and Employment to exempt certain bodies were in line with international norms on the right to freedom of association and whether such power wielded by one Minister did not violate the principle of equality enshrined in that right.

80. Mr. WIMER ZAMBRANO said that Ireland's answer to issue 19 was imprecise. He would think that a trade union that declared a strike would be liable for ensuing economic damages. He said he would like to know exactly what the immunities mentioned in paragraph 83 of Ireland's written replies were.

81. The CHAIRPERSON said that consideration of the initial report of Ireland would resume the following morning after a preliminary meeting with Committee members only.

The meeting rose at 6.05 p.m.